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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0496 AGI
Adjusted Gross Income Tax
For Tax Periods: 1991-1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Adjusted Gross Income Tax-1991 Net Operating Loss Carryback to 1988

Authority: 45 I.A.C. 3.1-1-9

Taxpayer protests the Net Operating Loss 1991 carryback to 1998 and contends that Auditor made a computational error.

2. Adjusted Gross Income Tax-Addback of Washington Business and Occupation Tax

Authority: IC 6-3-1-3.5 (b) (3)

Taxpayer protests the add-back of Washington Business and Occupation Tax to adjusted gross income.

3. Tax Administration-Negligence Penalty

Authority: IC 6-8.1-10-2(a) & (d)

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer designs, markets and manufactures products controlling motion, flow and pressure. Taxpayer has 800 product lines for hydraulic, pneumatic and electromechanical applications in some 1200 industrial and aerospace markets. Taxpayer distributes its products worldwide to both original equipment manufacturers and maintenance facilities. After an audit for the tax period 1991-1994, Taxpayer was assessed adjusted gross income taxes. Taxpayer timely protested the assessment.

ADJUSTED GROSS INCOME TAX -1991 OPERATING LOSS CARRY-BACK TO 1988

DISCUSSION

Taxpayer contends that the Statute of Limitations proscribes an adjustment to the tax liability for fiscal year 1988. Normally that would be correct. In this case, however, the adjustment to Taxpayer's tax liability was made pursuant to 45 I.A.C. 3.1-1-9(5), which states that,

> A taxpayer must claim a refund for a net operating loss carryback within three years of the original due date of the return for the loss year. If a taxpayer fails to claim a carryback loss within the time prescribed, the effect of the loss must be computed by the proper carryback even though no refund will be allowed in a situation where the taxpayer has other losses in years still within the statute of limitations. For a net operating loss carryforward, a taxpayer must claim a refund within the time prescribed by Regulation 6-3-6-4(a)(010) [45 I.A.C. 3.1-1-137]. Only the unused portion of the net operating loss after the proper carryback or carryforward will be available for the refund if the statute of limitations has expired to claim the original loss.

Taxpayer had filed a waiver of the Statute of Limitations and extension of time with the Internal Revenue Service for the tax year 1991. Indiana requires the same carry over treatment of the loss for Adjusted Gross Income Tax purposes as was elected for Federal tax purposes. 1991 was the loss year and since 1988 is within three years of the loss year, 1988 is open for adjustment as if it were 1991.

Alternatively, Taxpayer contends that the Department's auditor made a mathematical error in the fiscal year 1991 Net Operating Loss that was carried back to fiscal year 1988. Page 2 of the auditor's workpapers relating to fiscal year 1991 tax year (the year of the net operating loss) calculates and audited Indiana Business Loss of $155,711. Page 6 of the auditor's workpapers relating to fiscal year 1988 tax year (the loss carryback year) shows an Indiana net operating loss deduction of only $28,067. The fiscal year 1998 Indiana net operating loss deduction should have been $155,711 based on the auditor's recalculations.

FINDING

Taxpayer's protest concerning the applicability of the Statute of Limitations to the fiscal year 1998 adjustments is denied. Taxpayer's protest concerning the mathematical error is sustained subject to verification by the Audit Division.

ADJUSTED GROSS INCOME TAX -ADDBACK OF WASHINGTON BUSINESS AND OCCUPATION TAX

DISCUSSION

Taxpayer protests the addback of the Washington Business and Occupation Tax to their Indiana Adjusted Gross Income Tax. Taxpayer contends that the Washington Business and Occupation Tax is a gross receipts tax which does not need to be added back. The assessment was made pursuant to the provisions of IC 6-3-1-3.5-(b) (3), which require the following adjustment to taxable income:

> Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income. . .

The Washington Business and Occupation Tax may be called a gross receipts tax, but it is measured by income. The statute specifically states that taxes measured by income must be added back for Indiana Adjusted Gross Income Tax purposes. The fact that it is not called an income tax does not change the fact that the Washington Business and Occupation Tax is measured by income and must be added back in this situation.

FINDING

Taxpayer's protest is denied.

TAX ADMINISTRATION-NEGLIGENCE PENALTY

DISCUSSION

Taxpayer's final point of protest concerns the imposition of the negligence penalty that was imposed pursuant to IC. 6-8.1-10-2 (a) which states as follows:

> If a person fails to . . . pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs, upon examination by the department, a deficiency which is due to negligence,. . . the person is subject to a penalty.

In this case the add back of taxes for Indiana Adjusted Gross Income Tax purposes was an issue in a prior audit as well as in this audit. Therefore, Taxpayer was negligent in not properly adding back the required taxes.

FINDING

Taxpayer's protest to the imposition of the penalty is denied.